



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2020-0292; FRL-7822-01-OAR]

RIN 2060-AU79

Redesignation of Certain Unclassifiable Areas for the 2010 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is redesignating the Lancaster County, Nebraska and Milam County, Texas unclassifiable areas initially designated during the EPA's Round 2 air quality designations for the 2010 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS). Specifically, the EPA now has sufficient information to determine that these unclassifiable areas in Nebraska and Texas are attaining the 2010 1-hour SO₂ primary NAAQS. Therefore, the EPA is redesignating these areas to attainment/unclassifiable for the 2010 1-hour SO₂ primary NAAQS. The EPA is also approving these states' requests to redesignate the areas.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2020-0292. All documents in the docket are listed in the <https://www.regulations.gov>.

Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are currently closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on the EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Gobeail McKinley, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-04, Research Triangle Park, NC 27709, by email at mckinley.gobeail@epa.gov. The following EPA Regional office contacts can answer questions regarding the specific areas being redesignated:

U.S. EPA REGIONAL OFFICE CONTACTS:

Regional office	Affected State	Contact	Telephone	Email
Region VI	Texas	Robert Imhoff	(214) 665-7262	imhoff.robert@epa.gov
Region VII	Nebraska	Will Stone	(913) 551-7714	stone.william@epa.gov

Most EPA offices are closed to reduce the risk of transmitting COVID-19, but staff remain available via telephone and email. The EPA encourages the public to review information related to the redesignations at <https://www.epa.gov/sulfur-dioxide-designations> and in the public docket for these SO₂ redesignations at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OAR-2020-0292.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” or “our” means the EPA.

I. Background

After the promulgation of a new or revised NAAQS, the EPA is required to designate all areas of the country, pursuant to section 107(d)(1)-(2) of the Clean Air Act (CAA). For the 2010

1-hour SO₂ primary NAAQS,¹ designations are based on the EPA's application of the nationwide analytical approach to, and technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results. Pursuant to a March 2, 2015, consent decree and court-ordered schedule, the EPA finalized a second set of initial area designations for the 2010 1-hour SO₂ NAAQS in 2016 (also called, "Round 2"). For the Round 2 designations, the EPA designated the entirety of Lancaster County in Nebraska and the entirety of Milam County in Texas as unclassifiable. The Round 2 intended designations for Lancaster County, Nebraska and Milam County, Texas were published on March 1, 2016. (81 FR 10563). The final designation for Lancaster County, Nebraska published on July 12, 2016. (81 FR 45039). The final designation for Milam County, Texas was published on December 13, 2016, as part of a supplement to the larger Round 2 designation action. (81 FR 89870). Detailed rationale, analyses, and other information supporting the designation for these two areas can be found in the intended and final Round 2 designations' technical support documents for Nebraska and Texas, respectively. These Round 2 documents, along with all other supporting materials for the initial 2010 1-hour SO₂ primary NAAQS designations for these areas, can be found on the EPA's SO₂ designations web site.²

On May 6, 2020, Nebraska submitted a letter³ to the EPA requesting that the entirety of Lancaster County be redesignated to attainment/unclassifiable based on newly available monitoring information, which demonstrates attainment of the 2010 1-hour SO₂ NAAQS. On June 26, 2020, Texas submitted a letter⁴ to the EPA requesting that the entirety of Milam County

¹ The 2010 1-hour SO₂ NAAQS is met when the design value is 75 parts per billion (ppb) or less.

² <https://www.epa.gov/sulfur-dioxide-designations>

³ See letter dated May 6, 2020, from Pete Ricketts, Governor of the State of Nebraska to Jim Gilliford, Regional Administrator, EPA Region 7. This letter is included in the docket for this action.

⁴ See letter dated June 26, 2020, from Toby Baker, Executive Director of the Texas Commission of Environmental Quality to Ken McQueen, Regional Administrator, EPA Region 6. This letter is included in the docket for this action.

be redesignated to attainment/unclassifiable based on newly available monitoring information, which demonstrates attainment of the 2010 1-hour SO₂ NAAQS.

In a notice of proposed rulemaking (NPRM) published on September 2, 2020 (85 FR 54517), the EPA proposed to redesignate to attainment/unclassifiable the unclassifiable portions of Franklin and St. Charles Counties in Missouri; the entirety of Lancaster County in Nebraska; the entirety of Gallia County and the unclassifiable portion of Meigs County in Ohio; and the entirety of Milam County in Texas. As discussed in the NPRM, this final action is based on the currently available monitoring data for two of the areas included in that NPRM that demonstrate attainment of the 2010 1-hour SO₂ primary NAAQS. Additionally, in that NPRM, the EPA proposed to approve requests for redesignation from the states of Nebraska, Ohio, and Texas for the areas subject to the notice. The 30-day public comment period for the NPRM closed on October 2, 2020. The EPA did not receive any comments specific to the proposed redesignations of Lancaster County in Nebraska and Milam County in Texas. This action only addresses the redesignation of Lancaster County, Nebraska and Milam County, Texas. The areas in Missouri and Ohio received adverse comments and will be addressed in separate rulemaking actions. The details of each state's submittal and the rationale for the EPA's actions are further explained in the NPRM.

II. Final Action

In this action, the EPA is taking final action to redesignate Lancaster County, Nebraska and Milam County, Texas to attainment/unclassifiable for the 2010 1-hour SO₂ primary NAAQS pursuant to CAA section 107(d)(3)(D). The EPA is also taking final action to approve a request for redesignation from unclassifiable to attainment/unclassifiable for the 2010 SO₂ primary NAAQS from the state of Nebraska dated May 6, 2020, and from the state of Texas dated June 26, 2020. This action changes the legal designation for these areas, found at 40 CFR part 81, from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ primary NAAQS.

III. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This action addresses redesignation determinations for two areas for the 2010 SO₂ NAAQS. Under CAA section 107(d)(3), the redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment/unclassifiable does not in and of itself create any new requirements. Accordingly, this final action merely redesignates areas to attainment/unclassifiable and does not impose additional requirements. Area redesignations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from the Office of Management and Budget (OMB) and was, therefore, not submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action is a redesignation of two areas to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. Therefore, this final rulemaking does not impose any new information collection burden under the PRA.

C. Regulatory Flexibility Act (RFA)

This redesignation action under CAA section 107(d) is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedures Act (APA), 5 U.S.C. 553, or any other statute. Redesignations under CAA section 107(d) are not among the list of actions that are subject to the notice-and-comment rulemaking requirements of CAA section 307(d).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the federal government and the states for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) because no tribal lands are located within the areas covered in this action and the redesignation does not create new requirements. The EPA notes this final redesignation action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-

202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this determination is contained in Section III of this preamble,

“Environmental Justice Concerns.”

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

V. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Sulfur oxides.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the EPA amends title 40 CFR part 81 as set forth below:

PART 81 - DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.328, the table titled, “Nebraska—2010 Sulfur Dioxide NAAQS [Primary]” is amended by revising the entry for “Lancaster County” and redesignating it alphabetically under “Statewide” before the entry for “Lincoln County” to read as follows:

§ 81.328 Nebraska.

* * * * *

Nebraska—2010 Sulfur Dioxide NAAQS [Primary]

Designated area ¹	Designation	
	Date ²	Type
* * *	* *	* *

Lancaster County	[Insert date 30 days after publication in the Federal Register]	Attainment/Unclassifiable.
* * *	* *	* *

¹Includes any Indian country in each county or area, unless otherwise specified. The EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

²This date is April 9, 2018, unless otherwise noted.

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3. In §81.344, the table titled “Texas—2010 Sulfur Dioxide NAAQS [Primary]” is amended by revising the entry for “Milam County, TX” to read as follows:

§ 81.344 Texas.

* * * * *

Texas—2010 Sulfur Dioxide NAAQS [Primary]

Designated area	Designation	
	Date	Type
* * *	* *	* *
Milam County, TX	[Insert date 30 days after publication in the Federal Register]	Attainment/Unclassifiable.
* * *	* *	* *

¹Includes any Indian country in each county or area, unless otherwise specified. The EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

²This date is April 9, 2018, unless otherwise noted.

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